

1 UNITED STATES DISTRICT COURT
2
3 DISTRICT OF NEVADA4 ***
5
67 BRIT F. AUGBORNE, III,
8 Plaintiff,v.
9

HDSP, et. al.,

Defendants.

2:20-cv-00295-ART-VCF
REPORT AND RECOMMENDATION FOR
DISMISSAL10 Before the court is *Brit F. Augborne, III v. HDSP, et al.*, case number 2:20-cv-00295-APG-VCF.

11 Relevant background:

12 On April 1, 2022, the court scheduled a video conference hearing on the motion for reproduction
13 of documents electronically stored information, and tangible things (ECF No. 21), motion to strike (ECF
14 No. 22), motion to strike (ECF No. 23), and defendants' motion for extension of dispositive motion
15 deadline (ECF No. 25) for April 27, 2022. (ECF Nos. 24, 28). On April 22, 2022, the Court received the
16 return to sender/unable to forward mail envelope containing the first order setting the hearing for April
17 27, 2022. (ECF No. 29).18 On April 27, 2022, the court held a video conference hearing on the pending motions ECF Nos.
19 21, 22, 23, and 25. Appearing by video for defendant was William Shogren, Esq. Courtroom 3D doors
20 were opened during the hearing for plaintiff to appear in person. Plaintiff failed to appear. (ECF No. 30).21 On April 29, 2022, the court scheduled an in-person show cause hearing for 11:00 AM, June 1,
22 2022. (ECF No. 32). The Order was mailed to Brit Augborne at the addresses of 2920 W. 141 Place, Apt.
23 2, Gardena, CA and 131 E. 78th St., Los Angeles, CA. On May 3, 2022, defendants filed the last known
24 address of plaintiff. (ECF No. 34).

1 On June 1, 2022, the court held the show cause hearing and heard representations from defense
2 counsel Austin Barnum. Plaintiff failed to appear. (ECF No. 36). Mr. Barnum said that plaintiff's parole
3 officer went to the last known address of Plaintiff at 1821 Klamath Falls Way, Las Vegas, Nevada and
4 was unable to serve Plaintiff with the show cause order. The owner at 1821 Klamath Falls Way told the
5 parole officer that Plaintiff does not reside at that address.

6 Under Local Rule IA 3-1, “[a]n attorney or pro se party must immediately file with the court
7 written notification of any change of mailing address, email address, telephone number, or facsimile
8 number. The notification must include proof of service on each opposing party or the party’s attorney.
9 Failure to comply with this rule may result in the dismissal of the action, entry of default judgment, or
10 other sanctions as deemed appropriate by the court.”

11 Pursuant to Local Rule IA 11-8, “[t]he Court may, after notice and opportunity to be heard, impose
12 any and all appropriate sanctions on an attorney or party who, without just cause: (a) Fails to appear when
13 required for pretrial conference, argument on motion, or trial; (b) Fails to prepare for a presentation to the
14 Court; (c) Fails to comply with these Rules; or, (d) Fails to comply with any order of this Court.”

15 Here, Plaintiff failed to comply with LR IA 3-1 and the Court’s Orders (ECF Nos. 24, 28, 32), and
16 it would seem as though Plaintiff has abandoned this case.

17 The Court has clear authority to dismiss the case for failure to cooperate in the progress of the
18 litigation. "This power is necessary to prevent undue delays in the disposition of pending cases, docket
19 congestion, and the possibility of harassment of the Defendant." *Mederios v. United States*, 621 F.2d 468,
20 470 (1st Cir. 1980). To be sure, "[all litigants, including *pro ses*, have an obligation to comply with court
21 orders." *Minotti v. Lensink*, 895 F.2d 100, 103 (2d Cir. 1990)(per curiam). Thus, when they flout the
22 obligation to comply with court orders they, like all litigants, must suffer the consequences of their non-
23 compliance. See *McDonald v. Miegel*, 850 F.2d 121, 124 (2d Cir. 1988). Further, the Court need not
24 always exhaust every sanction short of dismissal before final action. *Edelson v. Commissioner*, 829 F.2d
25

1 828, 831 (9th Cir. 1987). Such a decision lies within the discretion of this Court. See *National Hockey*
 2 *League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639, 642 (1976); *Link v. Wabash R. Co.*, 370 U.S.
 3 628 (1962) (affirming district court's dismissal under Rule 41(b) after plaintiff's attorney failed to appear
 4 at a pretrial conference).

5 In determining whether to dismiss an action for lack of prosecution, failure to obey a court order,
 6 or failure to comply with local rules, the court must consider several factors:

7 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its
 8 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on
 9 their merits; and (5) the availability of less drastic alternatives. *See Thompson*, 782 F.2d at 831;
 10 *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d
 11 at 53.

12 Here, the Court finds that the first two factors, the public's interest in expeditiously resolving this
 13 litigation and the Court's interest in managing the docket, weigh in favor of dismissal. The third factor,
 14 risk of prejudice to Defendants, also weighs in favor of dismissal, since a presumption of injury
 15 arises from the occurrence of unreasonable delay in filing a pleading ordered by the court or prosecuting
 16 an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public
 17 policy favoring disposition of cases on their merits—is greatly outweighed by the factors in favor
 18 of dismissal discussed herein. Finally, a court's warning to a party that his failure to obey the court's
 19 order will result in dismissal satisfies the “consideration of alternatives” requirement. *Ferdik*, 963
 20 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d at 1424.

21 The court has held several hearings and has given Plaintiff ample notices and opportunities to
 22 prosecute this case. Again, Plaintiff has failed to follow the rules of this Court by not updating his address
 23 and by not appearing for hearings. (ECF Nos. 24, 28, 32).

24 Accordingly,

1 IT IS HEREBY RECOMMENDED that this case be dismissed for failure to comply with Court
2 Orders (ECF Nos. 24, 28, 32) and for failure to prosecute.

3 The Court Clerk is directed to mail a copy of this order to Plaintiff at the following addresses:

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5 Brit F. Augborne, III
6 2920 W.141 Place, Apt. 2
7 Gardena, CA 90249

8
9 Brit F. Augborne, III
10 131 E. 78th St.
11 Los Angeles, CA 90003

12
13 Brit F. Augborne, III
14 1821 Klamath Falls Way
15 Las Vegas, Nevada 89128

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17 **NOTICE**

18 Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be in
19 writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has held that
20 the courts of appeal may determine that an appeal has been waived due to the failure to file objections
21 within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1)
22 failure to file objections within the specified time and (2) failure to properly address and brief the
23 objectionable issues waives the right to appeal the District Court's order and/or appeal factual issues from
24 the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley*
25 *United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

DATED this 1st day of June 2022.


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CAM FERENBACH
UNITED STATES MAGISTRATE JUDGE